

Enforcing your rights under the

Employment Equality Act

Equality in a Diverse Ireland



THE EQUALITY AUTHORITY
AN tÚDARÁS COMHIONANNAIS

Employment Equality Act, 1998

Enforcing your Rights

The Employment Equality Act, 1998 outlaws discriminatory practices in relation to and within employment. The Act prohibits direct and indirect discrimination and victimisation in employment on nine grounds. These are:

- **gender**
- **marital status**
- **family status**
- **sexual orientation**
- **religion**
- **age**
- **disability**
- **race**
- **membership of the Traveller Community**

All aspects of employment are covered:

equal pay
access to employment
vocational training
conditions of employment
work experience
promotion
dismissal

The legislation applies to:

public and private sector employment
employment agencies
vocational training bodies
the publication of advertisements
trade unions and professional bodies
full-time and part-time workers
collective agreements

Discrimination

Discrimination is defined as less favourable treatment. A person is said to be discriminated against if she/he is treated less favourably than another is, has been, or would be treated on any of the nine grounds. To establish direct discrimination, a direct comparison must be made, for example, in the case of:

- **gender discrimination** - the comparison must be between a man and a woman
- **discrimination based on sexual orientation** - the comparison must be between a person of a particular sexual orientation, and one who has a different sexual orientation; and
- **disability discrimination** - the comparison must be between a person who has a disability and another who has not, or between persons with a different disabilities.

Indirect discrimination occurs when when practices or policies which do not appear to discriminate against one group more than another actually have a discriminatory impact. It can also occur where a requirement, which may appear non-discriminatory, adversely affects a particular group or class of persons.





Equal Pay

An objective of the Act is to ensure equal remuneration between persons or a group of persons for 'like work'. Like work is defined as the same, similar or work of equal value. Employees must be employed by the same employer, or an associated employer - an associated employer would include different plants within the same group and subsidiary or associated companies controlled directly or indirectly by the same body corporate.

Equal pay claims are no longer confined to claims as between men and women, but can be taken on any of the nine distinct grounds of discrimination. A claim can be lodged in respect of a period of three years before or three years after a specific time.



Harassment

The Employment Equality Act 1998, defines sexual harassment as unwanted physical intimacy, requests for sexual favours, spoken words and gestures and the display or circulation of written words, pictures or other materials in the workplace. Unwelcome requests or conduct that could reasonably be regarded as sexually or otherwise on the gender ground, offensive, humiliating or intimidating, shall constitute sexual harassment.

Harassment on grounds of marital status, family status, sexual orientation, religion, age, disability, race, or membership of the Traveller community is unlawful. An employer, an employment agency, or a vocational training body will be liable for harassment by their employees, clients, customers or other business contacts, if they do not take reasonable steps to prevent such harassment.

Employers are liable for the acts of employees done in the course of employment, whether or not the acts were done with the employer's knowledge. An employer is also liable for acts of agents of the company. An employer can argue in defence that she/he took reasonable steps to prevent the particular act of discrimination or that type of act generally.

What to do if you are discriminated against

If you feel that you have been discriminated against, there are a number of steps you can take:

- **Step 1**

Initially, a complaint should be raised with the employer. This provides an opportunity for resolution of the problem between the parties. If however the employee is not satisfied with the employer's response the next step is to consider contacting the Equality Authority or a trade union, or a solicitor.

- **Step 2**

Free advice is available from the Equality Authority (EA) to anyone who believes that she/he may have experienced discriminatory treatment in relation to employment or vocational training. Persons contacting the Equality Authority with regard to alleged discrimination are advised of their general position under the relevant legislation. Decisions regarding representation are made by the Authority, taking account of its priorities. The EA will ask complainants to complete a questionnaire at this stage of the

enquiry. This helps the EA to identify the basis of the complaint and to decide on the best course of action. The EA has an in-house legal service.

- **Step 3**

If an alleged act of discrimination becomes the subject of an investigation, the complainant must decide on the next stage. Legal representation before an Equality Officer or Equality Mediation Officer of the Director of Equality Investigations is not required by legislation. The individual may represent him/herself or may be represented by a trade union, solicitor or the Equality Authority. In some instances, complaints can be resolved by the EA without the involvement of the legal process. The EA may in the first instance endeavour to achieve a settlement between the parties. The EA may provide or engage legal representation for a client free of charge. The Labour Court cannot make an award for costs of private legal representation.

- **Step 4**

The Employment Equality Act, 1998 also established the Office of Director of Equality Investigations. The Office is separate to the Equality Authority, and has quasi-legal functions with regard to investigating cases taken under the equality legislation. After assistance /representation has been granted, the Equality Authority will refer the case to the Director. The Director may refer it to an Equality Mediation Officer unless either party objects, in which case an investigation is conducted by an Equality Officer (dismissals are dealt with in the first instance by the Labour Court). At the conclusion of an investigation the Director will issue a decision which is enforceable through the Circuit Court. A person who may have been discriminated against on the gender ground may opt to seek redress directly through the Circuit Court. In such a case, the normal ceiling on awards of the Circuit Court will not apply and it may order compensation, as appropriate, in the case.

• Step 5

All decisions of the Director may be appealed to the Labour Court within 42 days of issue. The Labour Court will issue legally binding determinations. Determinations may be appealed to the High Court on a point of law. The Labour Court may refer questions as to the interpretation of EU Law or Secondary Legislation to the European Court of Justice.

Relief

In equal pay cases - an award of equal pay and arrears in respect of a period not exceeding the preceding three years.

In other cases - equal treatment and compensation of up to a maximum of two years pay (or £10,000 where the person was not an employee).

In dismissal cases, the Labour Court may order re-instatement or re-engagement with or without compensation.

Victimisation

It is unlawful to penalise an employee for taking action pursuant to the enforcement of the legislation, for example, referring an equality claim or giving evidence in proceedings under equality legislation.

Time limits

Complaints under the Employment Equality Act must be brought within six months of the last act of discrimination. Different time limits may apply in equal pay disputes.

